

Blaine J. Benard (#5661)
Brent E. Johnson (#7558)
Engels J. Tejada (#11427)
Emily T. Howe (#18294)
HOLLAND & HART LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101-2194
Telephone: 801.799.5800
bjbenard@hollandhart.com
bjohnson@hollandhart.com
ejtejeda@hollandhart.com
ethowe@hollandhart.com

Attorneys for Defendant Uintah Basin Healthcare

**IN THE UNITED STATES DISTRICT COURT,
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

JASON RASMUSSEN et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

UINTAH BASIN HEALTHCARE, a Utah non-
profit corporation,

Defendant.

**DECLARATION OF DR. BRUCE V.
HARTLEY IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS
PLAINTIFFS' COMPLAINT UNDER
FEDERAL RULES OF CIVIL
PROCEDURE 12(B)(1) AND 12(B)(6), OR
IN THE ALTERNATIVE, SUMMARY
JUDGMENT UNDER RULE 56**

2:23-cv-00322-HCN-DBP

Judge Howard C. Nielson, Jr.
Chief Magistrate Judge Dustin B. Pead

I, Dr. Bruce V. Hartley, CISSP, declare as follows:

1. I have personal knowledge of the facts in this declaration and, if called to testify as a witness, I would testify under oath as to these facts.
2. The opinions made herein are based upon my personal knowledge, professional experience and upon my review of relevant records, documents, and information.

3. A copy of my CV detailing my most relevant experience is attached as **Ex. 16**.

4. I earned a Master of Arts in Computer Data Management from Webster University and a Doctorate in Computer Science from Colorado Technical University.

5. I am currently the Managing Director of Arete Advisors, Inc., where I lead the Advisory practice. Arete Advisors is a Cyber Security firm that focuses on data-centric investigations, incident response, and security assessments. The Advisory practice provides digital investigations and expert services, including the delivery of high-quality cyber security, incident response, digital investigations, and expert witness services across the company. I am currently leading several digital investigations and data security incident responses as well as providing expert witness services related to cyber security and/or trade secret issues involving several firms in the information technology space.

6. In addition to my current position as Managing Director of Arete Advisors, I have held other senior executive and technical management positions in numerous organizations as a Chief Information Officer, Chief Technology Officer, Chief Information Security Officer, and a National Service Line Leader at a “Big 4” professional services firm.

7. Prior to Arete, I was the Chief Technology Officer and Chief Information Security Officer at Discovia. Prior to Discovia, I was Vice President of the Celerity Consulting Group, where I led the Digital Forensics and Investigations practice. Prior to Celerity, I was the National Director for Discovery Services at Deloitte FAS, LLP. Before joining Deloitte, I was the Chief Technology Officer at Cricket Technologies and the IT Sector Director (CIO) at bd Systems, Inc. (now part of SAIC).

8. My experience includes creating and managing rapid growth technology organizations that create leading edge products and services. I hold two technology patents, one of which is in the cyber security space.

9. I am recognized by the National Computer Security Center as a Vendor Security Analyst (VSA) and certified by the ISC² as a Certified Information System Security Professional (CISSP).

10. I have extensive experience across the entire information technology, software engineering, and cyber security and digital forensic spectrum.

11. In my role as Chief Information Security Officer of Discovia, I led all corporate security initiatives and passed independent third-party security audits leading to ISO 27001 security certifications. I was the Founder, President, and Chief Executive Officer of Privisec, Inc., which provided top quality cyber security and forensic consulting services to the financial, healthcare, and local and state Government communities. I frequently led hands-on security assessment and penetration tests.

12. I have extensive experience with the security frameworks found in the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), 45 C.F.R. Part 164 Subpart C and NIST publication series. I led the development of an automated software package that assisted healthcare organizations in developing HIPAA-compliant security policies and system-level implementation specifications for both Microsoft Windows and Unix platforms.

13. My relevant publications include Data Security for Medical Information Systems and Confidentiality and Privacy Protection, Auerbach Publishing, New York; Ensuring Data Confidentiality and Integrity in Medical Information Systems: Defining a Security Policy,

Thompson Publishing Group, New York; Developing Effective Security Policies, Lotus Advisor Magazine; Security as a Process, with Anthony D. Locke, DM Review; Why is Computer Crime on the Rise? Business Security Advisor; Policy-Drive Network Security: A Proactive Approach to Securing the Enterprise, COTS Journal; Is Your Network Inviting Attack, with Eric Knight, Internet Security Advisor; Anatomy of a Vulnerability, Internet Security Advisor; Test of Strength and Security, Information Security; and Ensure the Security of Your Corporate Systems, Security Advisor.

14. I have extensive experience in creating, reviewing, and assessing cybersecurity programs, including those designed to protect personal information as well as to protect against anticipated threats to the personal information and to protect against breaches to system security. This experience includes analyzing and assessing whether policies are an appropriate scale and scope for the relevant organization and industry.

15. I have extensive knowledge of recognized cybersecurity frameworks and whether cybersecurity programs conform to these frameworks.

16. I have reviewed Uintah Basin Healthcare's written information security program (the "**WISP**"), its current and historical versions, including the version in effect as of November 7, 2022, when threat actors attacked UBH's computer network (the "**Incident**").

17. I have also interviewed Preston Marx, Vice President of Strategy & Innovation and Security Officer at UBH, regarding UBH's operations and business, the information it collects, its WISP, the Incident, and UBH's response to the Incident.

18. I have reviewed Intraprise Health's assessments of UBH's WISP, including for years 2021 and 2022, which are attached as Exs. 12 and 13 to the Marx Declaration. I have also

reviewed the documents referenced in the assessments, and actions taken by UBH in response to the assessments.

19. Based on my experience and familiarity with risk assessments under HIPAA and NIST 800-53 and 800-53a, Intraprise's assessments were correctly conducted pursuant to the standards referenced therein including HIPAA's Subpart C regulation and NIST 800-53.

20. Based on my experience and familiarity with the industry, UBH's operations, and review of the relevant documents, including Intraprise's assessments for years 2021 and 2022, it is my opinion that as of the date of the Incident, the WISP was of the appropriate scale and scope for UBH because:

a. The WISP specifically addresses the HIPAA security requirements including implementing and maintaining specified administrative, technical, and physical safeguards, implementing reasonable and appropriate written policies and procedures, and maintaining a written record of required activities, such as risk assessments.¹

b. A key element of an effective WISP for business the size and scope of UBH is a security risk assessment.

c. As defined in the WISP, UBH performs annual audits and risk assessments based upon NIST and HIPAA standards.²

21. Based on my experience and familiarity with the industry, UBH's operations, and review of the relevant documents, including Intraprise's assessments for years 2021 and 2022, it

¹ 5 C.F.R. §§ 164.302 to 164.318 and Practice Note, HIPAA Security Rule: Safeguards and Related Organizational and Document Requirements (5-502-1269).

² UBH ITS Security Policy 1.3.

is my opinion that UBH was reasonably complying with the WISP as of the date of the Incident because:

a. UBH engaged Intraprise, a qualified independent third-party consultant, to perform annual risk assessments, with a focus on ePHI, to assess its risk areas and identify means to mitigate those risks.³

b. The willingness to use a third-party for risk assessment and audit demonstrates a mind-set that leads to a more effective security program in practical application.

c. UBH has embraced a robust vulnerability management process that includes weekly vulnerability scans performed by the Utah Education and Telehealth Network. These weekly scans allow UBH to proactively identify and patch security vulnerabilities throughout their enterprise.

d. UBH has engaged Intraprise, a qualified independent third-party consultant, to perform annual remote penetration assessments. Although not a HIPAA requirement, penetration testing is a technique that evaluates the robustness the security controls described in the WISP, making it a crucial component of HIPAA compliance.

e. Since 2015, UBH has engaged Intraprise, a qualified independent third-party consultant, to perform an annual HIPAA compliance assessment leading to a HIPAAOne certification (HIPAA compliance), further demonstrating compliance with the WISP.

f. UBH regularly trains its information technology and general staff on information security and its training is appropriate for an organization of its size.

³ Samples of annual risk assessments were included in the Marx declaration as Exs. 12 and 13.

g. Consistent with best practices for similar healthcare organizations and companies of similar size, UBH applied vendor-provided patches to its information security systems as vulnerabilities were identified.

I declare under penalty of perjury under the laws of the State of Utah and the United States that the foregoing is true and correct.

Executed this 16th day of October 2023.

/s/ Dr. Bruce Hartley
Dr. Bruce Hartley, Managing Director
Arete Advisors, Inc